



**State of Wisconsin
Department of Children and Families**

NOTICE OF PUBLIC HEARING

Foster Care and Kinship Care

DCF 56 and 58

NOTICE IS HEREBY GIVEN that pursuant to ss. 48.62 (1) (a) and (8) (a), 48.67 (intro.) and (4), and 227.11 (2) (a), Stats., the Department of Children and Families proposes to hold 3 public hearings to consider emergency rules and proposed permanent rules relating to foster care and kinship care.

Hearing Information

**March 17, 2010
Wednesday
1:30 p.m.**

**MADISON
GEF 1 Building
201 E. Washington Avenue, Room D203**

**March 31, 2010
Wednesday
1:30 p.m.**

**MILWAUKEE
Bureau of Milwaukee Child Welfare, Region 3
2745 S. 13th Street, AV Room**

**April 8, 2010
Thursday
1:30 p.m.**

**STEVENS POINT
Portage County Health and Human Services
817 Whiting Avenue, Room 103-104, Lower Level**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

If you have special needs or circumstances regarding communication or accessibility at a hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audio format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 48.62 (1) (a) and (8) (a), 48.67 (intro.) and (4), and 227.11 (2) (a), Stats.

Statutes interpreted: Section 48.57 (3m) and (3n), Stats., as affected by 2009 Wisconsin Act 71; Sections 48.62 and 48.67, Stats., as affected by 2009 Wisconsin Act 28, and Section 48.685, Stats.

Related statute or rule: NA

Explanation of Agency Authority

Section 48.62 (1) (a), Stats., provides that any person who receives, with or without transfer of legal custody, 4 or fewer children or, if necessary to enable a sibling group to remain together, 6 or fewer children or, if the department promulgates rules permitting a different number of children, the number of children permitted under those rules, to provide care and maintenance for those children shall obtain a license to operate a foster home from the department, a county department or a licensed child welfare agency as provided in s. 48.75, Stats.

Section 48.62 (8) (a), Stats., as created by 2009 Wisconsin Act 28, provides that the department shall promulgate rules relating to foster homes providing levels of care that a licensed foster home is certified to provide. Those levels of care shall be based on the level of knowledge, skill, training, experience, and other qualifications that are required of the licensee, the level of responsibilities that are expected of the licensee, the needs of the children who are placed with the licensee, and any other requirements relating to the ability of the licensee to provide for those needs that the department may promulgate by rule.

Section 48.67 (intro.), Stats., provides that the department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees.

Section 48.67 (4), Stats., as created by 2009 Wisconsin Act 28, provides that the department shall promulgate rules that require that all foster parents successfully complete training in the care and support needs of children who are placed in foster care that has been approved by the department. The department shall promulgate rules prescribing the training that is required under this subsection and shall monitor compliance with this subsection according to those rules.

Summary of the Rule

Licensing of Court-Ordered Kinship Care Relatives to Operate Foster Homes and Limits on Kinship Care Payments

2009 Wisconsin Act 28 assumes that kinship care relatives who are providing care and maintenance for a child who is placed in the kinship care relative's home under an order of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) will apply for a license to operate a foster home in 2010. Licensing these relatives as foster parents will enable the Department to claim an additional \$6,524,300 federal

reimbursement under Title IV-E of the Social Security Act for 2010. Act 28 appropriates this \$6.5 million to be expended in 2011.

New applicants. Sections 48.57 (3m) (ap) and (3n) (ap), as created by 2009 Wisconsin Act 71, and this rule provide the specifics on licensing new court-ordered kinship care applicants as foster parents. These provisions apply to kinship care relatives who apply after January 1, 2010, or who have an application pending on that date.

As a condition of eligibility, a court-ordered kinship care relative who applies to the county department or the department for kinship care payments must apply for a license to operate a foster home. With certain limits, applicants will receive kinship care payments during the foster care licensure process. A county department or, in Milwaukee County, the Department, may make kinship care payments to a kinship care relative who is providing care and maintenance for a child who is placed in the home of the kinship care relative under a juvenile court order for no more than 60 days after the date on which the county department or the Department received the completed application of the kinship care relative for a license to operate a foster home or, if the application is approved or denied within those 60 days, until the date on which the application is approved or denied.

If the application is not approved or denied within those 60 days for any reason other than an act or omission of the kinship care relative, the county department or the Department may make kinship care payments for 4 months after the date on which the county department or the Department received the completed application or, if the application is approved or denied within those 4 months, until the date on which the application is approved or denied.

Notwithstanding that an application of a kinship care relative for a foster home license is denied, the county department or the Department may make kinship care payments to the kinship care relative for as long as the kinship care relative continues to meet the conditions for eligibility for those payments if the county department or the Department submits to the juvenile court information relating to the background investigation required when a kinship care relative applies for kinship care payments, an assessment of the safety of the kinship care relative's home and the ability of the kinship care relative to care for the child, and a recommendation that the child remain in the home of the kinship care relative, and the juvenile court, after considering that information, assessment, and recommendation, orders the child to remain in the kinship care relative's home.

Current kinship care providers. A non-statutory provision of 2009 Wisconsin Act 71 at Section 26 and this rule provide the specifics on the transition of current kinship care and long-term kinship care providers to be foster care providers. The non-statutory provision applies to a child who already is in kinship care on the date before the effective date of January 1, 2010. A court-ordered kinship care relative or long-term kinship care relative shall apply for a license to operate a foster home prior to or at the time of the reassessment or review of eligibility in calendar year 2010. The kinship care relative or long-term kinship care relative shall obtain a license to operate a foster home by no later than 6 months after the date of their first reassessment or review of eligibility following January 1, 2010.

If the kinship care relative or long-term kinship care relative refuses to obtain a license to operate a foster home or is unable to meet the minimum requirements for the issuance of a

license, the agency that prepared the child's permanency plan shall make a recommendation regarding the continuing necessity for and safety and appropriateness of the placement at the next permanency plan review or permanency plan hearing. The court or panel conducting the review or hearing shall make the determination. If the court or panel determines that the placement continues to be necessary, safe, and appropriate, the child may remain in the placement and the kinship care relative or long-term kinship care relative may continue to receive kinship care payments.

Levels of Care

Section 48.62 (8), Stats., as created by 2008 Wisconsin Act 28, provides that the Department shall promulgate rules to provide levels of care that a foster home is certified to provide, establish a standardized assessment tool to assess the needs of a child and determine the level of care that is required, and provide monthly rates of reimbursement for foster care that are commensurate with the level of care that the foster home is certified to provide and the needs of the child who is placed in the foster home.

The Department is implementing the rules on levels of care in two phases. This rule amends the base foster care licensing code and creates a process for certification of foster homes at Level One and Level 2. A future rulemaking order will create the requirements for foster homes with certification levels above Level 2, establish the customized assessment tool, and provide the process to determine monthly rates of reimbursement above the basic maintenance payment under levels of care.

Requirements for Level One Certification. The rule provides that a licensing agency may grant a Level One certification only to a foster home with a child-specific license. A "child-specific license" is a license that is issued to a relative of a child or an individual who has a previous existing relationship with the child or the child's family.

A foster parent who operates a foster home with a Level One certification shall receive a minimum of 6 hours of pre-placement training within 6 months after the date of initial licensure.

The basic maintenance payment is \$215 before January 1, 2011, and \$220 beginning January 1, 2011, for care and maintenance provided for a child of any age by a foster home that is certified to provide level one care.

Requirements for Level 2 Certification. An individual who applies for a license to operate a foster home with a Level 2 certification must submit at least 3 favorable reference letters written by persons unrelated to the applicant.

Level 2 requires the same amount of pre-placement training as Level One, which is a minimum of 6 hours. A foster parent must complete the pre-placement training before or after initial licensure but prior to the placement of any child in the home, except if the foster parent has a child-specific license, the training must be completed within 6 months after the date of initial licensure.

A foster parent who operates a foster home with a Level 2 certification must also complete a minimum of 30 hours of initial licensing training during the initial licensing period and complete 10 hours of ongoing training in each 12-month period of licensure subsequent to the initial licensing period.

The basic maintenance payment for care and maintenance provided by a foster home with a Level 2 certification is the age-related payment established by s. 48.62 (4), Stats.

Waiver of Non-Safety Requirements for Relatives

42 USC 671(a)(10) provides that a state must establish and maintain standards for foster family homes that are reasonably in accord with recommended standards of national organizations concerned with these standards, including standards related to admission policies, safety, sanitation, and protection of civil rights. The state must apply those standards equally to all foster family homes, unless a waiver of a standard has been granted with respect to a particular relative foster family home. A waiver of a standard may be made only on a case-by-case basis and applied only to non-safety related standards in relative foster family homes for specific children in care. States must determine which of their foster care licensing standards are not safety related.

This rule provides that the licensing agency may grant waivers of the following non-safety standards in ch. DCF 56 when licensing a relative foster home:

- Documents that an applicant must submit when applying for a license:
 - Applicant's employment history for 5 years prior to application.
- Licensee qualification requirements:
 - An applicant for an initial license or a foster parent applying for renewal of a license shall furnish proof to the licensing agency of having homeowner's or renter's liability insurance. A licensing agency shall have on file verification that each foster parent licensed by that agency has insurance coverage, or shall have on file documentation that the foster parent has been granted a waiver, or has been issued a license for a period not to exceed 90 days to allow the foster parent to obtain necessary documentation to request a waiver.
- Requirements for the physical environment:
 - A foster home must have an interior living area with a minimum of 200 square feet for each household member, including each foster child.
 - Sleeping arrangements
 - Each foster child shall be provided with a separate bed except that 2 related children under 12 years of age may share a double or larger bed.
 - There shall be a minimum of 2 feet horizontally between beds except that between bunk beds there shall be a minimum of 5 feet.
 - A sleeping room that someone must pass through to get to another part of the building may not be used for a foster child.
 - A foster child may not regularly sleep in a room to which access can be gained only through another occupied sleeping room.
 - No more than 4 children may regularly occupy one bedroom.
 - The licensee shall provide enough drawer and closet space to reasonably accommodate each foster child's clothing and other personal belongings.

- Each foster home shall have available outdoor recreation and play space either on the premises or nearby.
- Requirements on care of foster children:
 - Clothing
 - The licensee shall ensure that funds allocated for the purchase of clothing for foster children are used in such a manner and that children in the licensee's care are comfortably and appropriately dressed within the limits of the funds. Foster children's clothing shall be maintained in a state of good repair and cleanliness.
 - Clothing purchased for a foster child or otherwise provided to a foster child with the understanding that the clothing belongs to the foster child shall be the property of the child and shall be given to the child to take when he or she leaves the foster home.
 - Personal belongings
 - When a foster child leaves a foster home, he or she may take all special equipment or other personal belongings that the child had when placed in the foster home, that were given to the child to keep, that the child received as gifts, or that were purchased on behalf of the child with public funds, unless the items are permanently affixed to the foster home.
 - Spending money
 - The foster parent shall give each foster child spending money each week. The amount of spending money given to a foster child shall be appropriate to the child's age and maturity and in accordance with the child's case plan established by the supervising agency.
 - Education
 - The foster parent shall make every reasonable effort to participate, as appropriate, in school activities involving foster children in their care.
 - The foster parent may not provide a home-based private educational program to foster children in their care. This does not apply to homebound study under s. 118.15 (1), Stats., or as defined in the child's individualized education program.
 - Foster children shall be given the opportunity to develop appropriate friendships with schoolmates and to visit their friends.
 - The foster parent shall provide suitable reading material and facilities for undisturbed reading and study for all foster children in their home who wish to read or who have homework assignments.
 - The foster parent shall assist the agency and any contracted agency with the transfer of independent living skills to and the preparation for independent living of a foster child whose permanency plan indicates the need for these skills and preparation.

The rule provides that the Department exceptions panel may grant waivers of the following non-safety related standards in ch. DCF 56 when a relative foster home is licensed:

- Documents that an applicant must submit when applying for a license:
 - The applicant must submit verification of homeowner's or renter's liability insurance coverage or a request for a waiver. A licensing agency need not retain a copy of the documentation in its files.
- Requirements for the physical environment
 - Sleeping arrangements
 - No foster child one year of age or older may regularly share a bedroom with an adult unless a physician determines that it is medically necessary and the licensing agency approves.
 - Heating
 - No foster home may be maintained at any time at a temperature of less than 68 degrees Fahrenheit during waking hours or 58 degrees Fahrenheit during sleeping hours unless written approval has been obtained from the licensing agency.

Other Changes To Foster Care Rules

- Agency contact. A licensing agency or placing agency shall have at least one contact per month with a foster parent who operates a foster home with a Level One or Level 2 certification if a child is placed in the foster home.
- Disaster plan. Each licensed foster home shall file a disaster plan with the licensing agency that would allow the licensing agency to identify, locate, and ensure continuity of services to children under the placement and care responsibility or supervision of an agency who are displaced or adversely affected by a disaster.
- Foster parent handbook. A licensing agency shall provide each licensed or prospective foster parent with a copy of the agency's foster parent handbook prior to or at the time of the issuance of the license to operate a foster home.
- Prohibit co-sleeping with infant. Each infant child, birth to 12 months of age, shall sleep alone in a crib, bassinet, or playpen.
- Sibling and parental connections. Licensing agencies may grant an exception to allow more than 4 but no more than 8 foster children in a foster home if necessary to keep to keep siblings together or a minor parent and minor child together. Licensing agencies shall apply to the department exceptions panel to place more than 8 children in a foster home if necessary to keep siblings together or to keep a minor parent and minor child together.
- Background check. Before an initial foster home license is issued or a license is renewed, the licensing agency shall conduct a reverse search by address of the Wisconsin sex offender registry. The background check section is also updated based on changes to s. 48.685 (2) (c), Stats., and 42 USC 671(a)(20).
- Vehicle liability insurance. Waivers of motor vehicle liability insurance may no longer be granted. Section 344.62, Stats., requires motor vehicle liability insurance effective June 1, 2010.

- Child safety restraint systems. The rule incorporates the requirements of s. 347.48 (4), Stats.

Summary of Factual Data and Analytical Methodologies

The non-statutory requirements of the rule are based on recommendations from the Foster Parent Training Committee, the Out-of-Home Care/Adoption Committee, and listening sessions held by the Department regarding implementation of levels of care.

Summary of Related Federal Requirements

In general, a state can be eligible for federal funding under Title IV-E of the Social Security Act for foster care assistance if:

- The child was removed and placed in foster care in accordance with either of the following:
 - A voluntary placement agreement between the state agency, or any other agency acting on behalf of the state, and the parents or guardians. If the child has remained in voluntary placement for a period in excess of 180 days, a judicial determination must be made.
 - A judicial determination that:
 - The placement is in the best interests of the child.
 - Continuation in the home from which removed would be contrary to the welfare of the child and that reasonable or, in the case of an Indian child, active efforts have been made to preserve and unify the family, with the child's health and safety as the paramount concern.
- The child's placement and care are the responsibility of the state agency or any other public agency with which the state has made an agreement.
- The child has been placed in a foster family home, treatment foster home, group home, shelter care, or residential care center for children and youth.
- The child, while in the home, would have met the eligibility criteria for Aid to Families with Dependent Children as the program existed on July 16, 1996.

42 USC 671(a)(24) requires that the state plan for foster care and adoption assistance include a certification that, before a child in foster care under the responsibility of the state is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.

45 CFR 1355(a) includes in the definition of "foster family home" a provision that states may claim Title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure and the date the actual license is issued, not to exceed 60 days.

42 USC 671(a)(31) provides that a state must provide that reasonable efforts are made to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the state documents that such joint placement would be contrary to the safety or well-being of any of the siblings. If siblings are not jointly placed, the state must

provide for frequent visitation or other ongoing interaction between the siblings, unless that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

42 USC 671(a)(20) provides that a state must provide procedures for criminal records checks, including fingerprint-based checks of national crime information databases, for all prospective foster or adoptive parents. A state must also check any child abuse and neglect registry maintained by the state or another state in which any prospective foster or adoptive parent or other adult living in the home has resided in the preceding 5 years.

Comparison to Adjacent States

Michigan. Michigan is operating its child welfare system under the terms of a settlement agreement in the class action lawsuit *Dwayne B. v. Granholm*. The settlement was approved on October 24, 2008. One of the goals of the settlement agreement is increased supervision, services, and support to children placed in relative care. The settlement agreement includes the following provisions:

- Other than certain exceptional circumstances, all foster parents shall be licensed. Relative caregivers of all children who enter state foster care custody on or after 10/1/08 must be licensed. The department will implement a plan to license current unlicensed relative caregivers in a phased-in time period. Unlicensed relative providers must still meet the same safety standards as nonrelative providers. The settlement monitor shall conduct a review of the department's implementation of the settlement if more than 10% of unlicensed relative caregivers decline to be licensed.
- All licensed relative foster care providers shall receive the same foster care maintenance rates as similarly situated unrelated foster care providers. Historically, relative caregivers were encouraged to apply for public assistance and would be eligible for a child-only grant regardless of income. A relative caregiver would only be eligible for a standard foster care payment if the parental rights of the child's parents were terminated.
- The department will publicize the procedures on obtaining variances from standard foster care licensing requirements for purposes of licensing relative homes. The department shall not waive any licensing standards that are essential for the safety and well-being of the child.

The department may grant a variance from an administrative rule if the proposed variance assures that the health, care, safety, protection, and supervision of a foster child are maintained.

Minnesota. A license is required for foster care by an individual who is a relative to the child except for an unlicensed emergency relative placement. In licensing a relative, the commissioner shall consider the importance of maintaining the child's relationship with relatives as an additional significant factor in determining whether a background study disqualification should be set aside or a variance should be granted.

A license applicant or license holder may request, in writing, a variance from rule requirements that do not affect the health, safety, or rights of the child or others. A variance request must include alternative equivalent measures the foster care applicant or license holder will take to ensure the health and safety of children if the variance is granted.

Illinois. Relatives who care for children for whom the Department is legally responsible may, but need not, apply for licensure as a foster family home. Only placements in licensed foster family homes receive the foster care payment rate. Relatives who are unlicensed receive the child-only standard of need.

Unless prohibited by law, the director of the department may waive, or may conditionally waive, any requirement in the foster care licensing rules if doing so is in the best interest of the foster care children.

Iowa. Relatives who are caring for a child may be eligible to receive financial assistance through foster care or a child-only or family grant under the state's Temporary Assistance to Needy Families program. To receive foster care payments, a relative must be licensed as a foster parent.

On a case-by-case basis, the service area manager or area social work administrator may waive any licensing standard unless the requirement is set in state or federal law or the waiver could have a negative impact on the safety and well-being of a child placed in the foster family home.

Effect on Small Businesses

The proposed rule will affect small businesses as defined in s. 227.114 (1), Stats., but will not have a significant economic impact on a substantial number of businesses. The Department's Small Business Regulatory Coordinator is Elaine Pridgen, (608) 267-9403, elaine.pridgen@wisconsin.gov.

Analysis Used to Determine Effect on Small Businesses

The proposed rule will affect private child-placing agencies, but the effect will be minimal.

Agency Contact Person

Jonelle Brom, Bureau of Permanence and Out-of-Home Care, Division of Safety and Permanence, (608) 264-6933, jonelle.brom@wisconsin.gov.

Place Where Comments are to be Submitted and Deadline for Submission

A copy of the proposed rules is available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
Department of Children and Families
201 E. Washington Avenue
Madison, WI 53707
(608) 267-9403
dcfpublichearing@wisconsin.gov

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than April 9, 2010, will be given the same consideration as testimony presented at the hearing.

Kimmie Collins February 11, 2010
Secretary or designee